

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL PRODUCTS INC.,

Plaintiff,

v.

INNOVATIVE INTELLIGENT
PRODUCTS, LLC D/B/A/ GPS
LOCKBOX

Defendant.

CASE NO. 2:20-cv-00428-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Defendant's emergency motion for a continuance of all outstanding court due dates in this case for 180 days due to the passing of one of Defendant's two principals. Dkt. # 51. Plaintiff National Products Inc. ("Plaintiff") opposes a continuance. Dkt. # 54.

II. LEGAL STANDARD

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, a case schedule "may be modified only for good cause and with the judge's consent." The standard for "good cause" focuses primarily "on the diligence of the party seeking the amendment."

1 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). *See* Fed. R.
 2 Civ. P. 16 advisory committee’s notes (1983 Amendment) (“[T]he” court may modify the
 3 schedule on a showing of good cause if it cannot reasonably be met despite the diligence
 4 of the party seeking the extension”).

5 **III. DISCUSSION**

6 Late on January 28, 2021 or in the early morning of January 29, 2021, Joseph
 7 Todorzak, one of the two principals of Defendant Innovative Intelligent Products, LLC,
 8 D/B/A GPS Lockbox (“GPS Lockbox” or “Defendant”), passed away suddenly and
 9 unexpectedly. Dkt. # 51 at 1. Mr. Todorzak was the manager of GPS Lockbox, while his
 10 partner, Jack Dovey was the point person on this litigation. Dkt. # 21 at 6. On February
 11 4, 2021, Defendant filed this motion for a 180-day continuance of all court due dates.
 12 Dkt. # 51.

13 Defendant argues that a continuance is warranted because “[t]he demands of
 14 running GPS Lockbox essentially single-handedly make Mr. Dovey substantially
 15 unavailable for litigation purposes for quite some time.” *Id.* at 2. Defendant also points
 16 to “corporate formalities [that] must be followed” to elect a new company manager and
 17 need for the estate to be legally established by the Superior Court as warranting a
 18 continuance. *Id.* Additionally, Defendant asserts Mr. Todorzak’s widow has a direct
 19 interest in Defendant’s counterclaim that Mr. Todorzak be named as a co-inventor on one
 20 or more of the Patents-in-Suit creates and would need to be brought up to speed on the
 21 litigation. *Id.* at 3.

22 Defendant estimates that a continuance of 180 days is appropriate based on
 23 Washington estate and probate law. *Id.* at 7-8. Defendant cites RCW 11.20.010, which
 24 provides an executor 40 days to deliver a decedent’s will to the appropriate court, and
 25 RCW 11.44.015, which provides that a personal representative has 90 days to prepare an
 26 inventory of assets. *Id.* at 8. Defendant notes that the COVID-19-related delays may add
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1 a week or two for the appointment of a personal representative. *Id.* Defendant estimates
2 that the statutes would require about 135 days. *Id.* Defendant adds 45 days as a “buffer
3 in case there are unexpected difficulties or something else arises.” *Id.*

4 Plaintiff opposes the request, claiming there is no good cause to warrant such a
5 continuance and that Plaintiff would suffer “severe prejudice” in addition to the
6 “irreparable harm [Defendant’s] sales of infringing products have already caused
7 [Plaintiff] to suffer.” Dkt. # 54 at 4. Plaintiff claims that it is losing sales to Defendant’s
8 allegedly infringing products that directly compete with its own and is incurring “the
9 damage of lost follow-on sales generated from established business relationships.” *Id.* at
10 6-7. Plaintiff asserts that it has documented more than 10 examples of actual lost sales
11 valued in the millions of dollars of its products to Defendant and its allegedly infringing
12 products. *Id.* at 6. Moreover, Plaintiff claims that probate proceedings do not provide
13 good cause for a continuance because “there is no connection between the separate
14 decisions” and they can proceed in parallel. *Id.* at 9-10.

15 Having considered the arguments raised by the parties, the Court finds good cause
16 to continue the due dates set forth in the case schedule by 120 days. While this Court
17 normally prefers to adhere to a case schedule, in this circumstance the Court recognizes
18 that a death of one of Defendant’s two principals presents a significant challenge in
19 moving forward on the prior schedule, despite Defendant’s utmost diligence. With
20 appropriate diligence, 120 days should be sufficient for Defendant to meet case deadlines,
21 while limiting prejudice to Plaintiff to the extent possible.

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